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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,714	02/10/2004	Roy Gary Black	ISI0401	3828
7590 H. Michael Brucker Suite 110 5855 Doyle Street Emeryville, CA 94608			EXAMINER WENDELL, MARK R	
			ART UNIT 3635	PAPER NUMBER
			MAIL DATE 10/29/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/775,714

Applicant(s)

BLACK, ROY GARY

Examiner

Mark R. Wendell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21 and 23 is/are allowed.
- 6) ☐ Claim(s) 1-9, 11 and 15 is/are rejected.
- 7) ☐ Claim(s) 10, 12-14 and 16-18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Mueller (US 6560940). Regarding claim 1, Mueller illustrates in Figure 1 a system for controlling moisture in a building wall having stacked straw bales at its core comprising:

- A foundation wall (120) having a generally horizontal top surface; and
- A step extending laterally and downwardly away from said foundation wall top surface whereby said step is outboard of and not vertically aligned with the bales.

The examiner notes that straw bales are not positively claimed within the body of the claim and it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause (*Kropa v. Robie*, 88 USPQ 478 (CCPA 1951)).

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Regarding claim 2, Mueller illustrates in Figure 1 the step extending from a location below the horizontal surface of the foundation wall (120).

Regarding claim 3, Mueller illustrates in Figure 1 the step and foundation being integral and both formed of concrete.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 11, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller (US 6560940) in view of Canada (US 6061986). It is described above what is disclosed by Mueller, however regarding claim 9 Mueller does not teach a wall membrane. Canada discloses in column 2, lines 17-33 a wall membrane extending outwardly from the bales in the direction of the step (downward) and abutting the upper surface of the step. The paragraph in Canada states that the breathable fabric membrane not only projects downward but also surrounds the bales which would indicate the membrane abuts the top of the step since the bales sit on the foundation.

Regarding claims 11 and 15, Canada illustrates in Figure 1 a building wall (10) with an uppermost straw bale (12A) further comprising:

- An interior membrane (16) covering the bales on one side of the wall and extending above the uppermost bale;
- An exterior membrane (26 or 34) covering the bales on the other side of the wall and extending above the uppermost bale;
- A wall bond beam (66) disposed on the interior (16) and exterior (26 or 34) membrane above and spaced apart from the uppermost bale (12A) and between the interior membrane and exterior membrane.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller (US 6560940) in view of David Mar illustration (seen in previous office action). The David Mar illustration shows a pair of spaced-apart runners (2x4's) attached to the foundation near its edges less than the width of a straw bale, creating a channel. It would be obvious to one of ordinary skill in the art, with the motivation of elevating straw bales to keep them from resting in standing water and to make construction easier and cheaper by using straw bales instead of concrete or drywall, to modify the wall and foundation system of Mueller with the runners of David Mar.

Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller and David Mar illustration as applied to claims 4 and 5 above, and further in view of "Keeping Straw-bale Houses Warm and Dry." It is discussed above what is disclosed

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by Mueller and Mar, however neither teaches drain rock disposed in the channel between runners. The article "Keeping Straw-bale Houses Warm and Dry," published online in April of 2002, states that to keep ground water from getting into the wall, it is known "to raise bales off the ground and put a waterproof membrane or capillary break (like gravel) between the bales and the foundation." It would be obvious to one of ordinary skill in the art to modify the straw-bale system of Mueller and David Mar mentioned above with the waterproof membrane (sheet material) and capillary break taught in "Keeping Straw-bale Houses Warm and Dry," to keep ground water from getting into the wall.

Regarding claim 8, it would have been obvious to one having ordinary skill in the art at the time of invention was made to include building paper as the underlying waterproofing medium, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice (In re Leshin, 125 USPQ 416). The examiner notes that building paper is a commonly used waterproofing sheet material and is used in many facets of waterproofing such as underlying hardwood floors in housing.

Allowable Subject Matter

Claims 10, 12-14, 16-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 21 and 23 are allowed.

Response to Arguments

Applicant's arguments with respect to claims 1-9, 11-23 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark R. Wendell whose telephone number is (571) 270-3245. The examiner can normally be reached on Mon-Fri, 7:30AM-5PM, Alt. Fri off, EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Richard Chilcot
Supervisory Patent Examiner
Art Unit 3635

MRW
October 25, 2007